

(e) Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision of the Administrative Law Judge. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 15 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition is filed, the decision of the Administrative Law Judge shall be deemed the final agency action.

(f) The Secretary's decision shall be issued within 60 days of the notice by the Secretary accepting the submission, and shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.412 Alternative summary proceedings.

In lieu of an administrative hearing before an Administrative Law Judge under the above procedures, an applicant or certificate holder who does not dispute the factual findings of the Administrator may, within 30 days of the date of issuance of the notice of denial, revocation, or assessment (or within 20 days in the case of a notice of emergency revocation) petition the Administrator instead to reconsider the denial or revocation of the certificate or the assessment of civil money penalties. An applicant or certificate holder electing this informal procedure may appear before the Administrator in person, make a written submission to the Administrator, or both. Such reconsideration by the Administrator shall be available only upon waiver by the applicant or certificate holder of the formal hearing procedures provided by the above regulations.

§ 530.413 Certification of the record.

Upon receipt of a complaint seeking review of a final decision issued pursuant to this part filed in a United States District Court, after the administrative remedies have been exhausted, the Chief Administrative Law Judge shall promptly index, certify and file with the appropriate United States District Court, a full, true, and correct copy of

the entire record, including the transcript of proceedings.

§ 530.414 Equal Access to Justice Act.

Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act. In any hearing conducted pursuant to these regulations, Administrative Law Judges shall have no power or authority to award attorney fees or other litigation expenses pursuant to the Equal Access to Justice Act.

PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

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AUTHORITY: Sec. 3(m), 52 Stat. 1060; sec. 2, 75 Stat. 65; sec. 101, 80 Stat. 830; 29 U.S.C. 203 (m) and (t).

SOURCE: 32 FR 13575, Sept. 28, 1967, unless otherwise noted.

Subpart A—Preliminary Matters

§ 531.1 Definitions.

(a) *Administrator* means the Administrator of the Wage and Hour Division or his authorized representative. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 3(m) of the Act.

(b) *Act* means the Fair Labor Standards Act of 1938, as amended.

§ 531.2 Purpose and scope.

(a) Section 3(m) of the Act defines the term "wage" to include the "reasonable cost", as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. In addition, section 3(m) gives the Secretary authority to determine the "fair value." of such facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of "fair value." Whenever so determined and when applicable and pertinent, the "fair value" of

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the facilities involved shall be includable as part of "wages" instead of the actual measure of the costs of those facilities. The section provides, however, that the cost of board, lodging, or other facilities shall not be included as part of "wages" if excluded therefrom by a bona fide collective bargaining agreement. Section 3(m) also provides a method for determining the wage of a tipped employee.

(b) This part 531 contains any determinations made as to the "reasonable cost" and "fair value" of board, lodging, or other facilities having general application, and describes the procedure whereby determinations having general or particular application may be made. The part also interprets generally the provisions of section 3(m) of the Act, including the term "tipped employee" as defined in section 3(t).

Subpart B—Determinations of "Reasonable Cost" and "Fair Value"; Effects of Collective Bargaining Agreements

§ 531.3 General determinations of "reasonable cost."

(a) The term *reasonable cost* as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) *Reasonable cost* does not include a profit to the employer or to any affiliated person.

(c) Except whenever any determination made under § 531.4 is applicable, the "reasonable cost" to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5 1/2 percent) for interest on the depreciated amount of capital invested by the employer: *Provided*, That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of